



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MKB - 176120

PRELIMINARY RECITALS

Pursuant to a petition filed August 9, 2016, under Wis. Stat., §49.45(5), to review a decision by the Bureau of Children's Services to discontinue Katie Beckett Medical Assistance (MA), a hearing was held on September 22, 2016, by telephone.

The issue for determination is whether petitioner meets a necessary level of care for Katie Beckett eligibility.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Written submission of [REDACTED], RN
Bureau of Children's Services
P.O. Box 7850
Madison, WI 53707-7850

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 14-year-old resident of Marathon County.
2. Petitioner has cerebral palsy. She has been eligible for Katie Beckett MA since 2003 at a nursing home level of care.

3. Petitioner's eligibility was reviewed in July, 2016. Petitioner's physical health has improved so that she has only regular medical checkups. She has an Intrathecal Baclofen Pump that runs continuously and which has to be refilled approximately every six months.
4. Petitioner is in her age appropriate grade at school and performs within grade level expectations.
5. Petitioner needs hands-on assistance with bathing, dressing, and toileting. She feeds herself and is not on a special diet. She is able to walk short distances with a walker but uses a wheelchair for longer distances. She attends physical therapy once per week at school.
6. By a notice dated July 20, 2016 the Katie Beckett office informed petitioner's parents that petitioner's Katie Beckett eligibility would end August 20 because she no longer met the required level of care. Benefits were continued pending this decision.

DISCUSSION

The purpose of the "Katie Beckett" waiver is to encourage cost savings to the government by permitting children under age 18, who are totally and permanently disabled under Social Security criteria, to receive MA while living at home with their parents. Wis. Stat., §49.47(4)(c)1m. The Bureau of Children's Services is required to review "Katie Beckett" waiver applications in a five-step process. The first step is to determine whether the child is age 18 or younger and disabled. If the child clears this hurdle, the second step is to determine whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR. The remaining three steps are assessment of appropriateness of community-based care, costs limits of community-based care, and adherence to income and asset limits for the child.

A policy document for levels of care for all children's long term support programs was issued in February, 2011. It can be found on the internet at www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf, and it will be referred to the ILC hereafter. There currently are four levels of care: hospital, psychiatric hospital for severe emotional disorders (SED), nursing home, and care facility for the developmentally disabled (ICF-DD).

Petitioner is not developmentally disabled and does not have emotional disorders. She does not require the interventions that would meet a hospital level of care. The issue is whether she meets the nursing home level of care.

To meet the nursing home level, the child (1) must have a diagnosis or medical/physical needs that result in a long-term disability and (2) must need nursing interventions and/or must have substantial functional limitations that require hands on assistance from others throughout the day.

If the child has a long-term disability, the Nursing Home Level of Care then is broken down into two standards. Standard I requires (1) medical/physical needs that require either (a) one substantial daily nursing intervention or (b) less frequent (but at least weekly) multiple nursing interventions, and (2) substantial functional limitations in at least two of the following: learning, communication, self-care, mobility, social competency, work, and meal preparation or money management.

Standard II does not require the skilled nursing intervention, but requires daily hands on assistance with at least four of the following: learning, communication, bathing, grooming or dressing, eating, toileting, and mobility.

Petitioner does not require daily or even weekly medical interventions. The question then is whether she requires interventions in four of the areas found in Standard II. The agency determined that petitioner needed assistance in bathing. It also is evident that she would meet the requirement for mobility because she

uses a wheelchair for longer distances and a walker for short distances. See Appendix B to the ILC for children ages 12-17.

The agency found that petitioner does not need assistance with dressing or toileting. Petitioner's father reported that for dressing, although she can slowly put on shorts and a t-shirt as stated in the review form, she requires assistance with other clothes, particularly pants and heavier tops like sweatshirts. He also reported that although she was toileting independently in the summer the experiment did not work out as she was unable to adequately wipe herself. Petitioner's father explained that when he filled out the review form he feels he was overly generous in his assessment of petitioner's capabilities in those areas.

I conclude that petitioner still meets the level of care as she requires physical assistance in four areas found in Standard II of the Nursing Home level. Obviously it could be argued that petitioner's father's testimony was self-serving, but he filled out the original assessment form, so we have to accept his responses with some amount of trust. His explanation for the differences in the way the form was filled out and his testimony at hearing were credible, and I will accept them.

CONCLUSIONS OF LAW

Petitioner continues to meet the Nursing Home level of care for Katie Beckett eligibility because she has a long term disability, and she requires assistance in four of the seven areas described in Standard II of the level's criteria.

THEREFORE, it is

ORDERED

That the matter be remanded to the Bureau with instructions to continue petitioner's Katie Beckett MA eligibility under the Nursing Home level of care. The agency shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

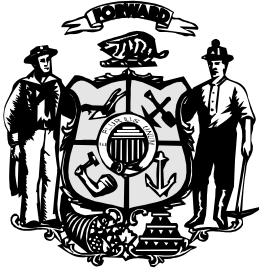
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of September, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 23, 2016.

Bureau of Long-Term Support
Division of Health Care Access and Accountability